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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,275	08/08/2001	Kevin R. Heath	10527-118004	5505

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EXAMINER

PHAN, HIEU

ART UNIT PAPER NUMBER

3738

DATE MAILED: 07/02/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/924,275

Applicant(s)

HEATH, KEVIN R.

Examiner

Hieu Phan

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-76 is/are pending in the application.
- 4a) Of the above claim(s) 58-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-37 and 49-57 is/are rejected.
- 7) ☒ Claim(s) 38-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Applicant's election without traverse of Specie 1, claims 1 and 31-57, in Paper No. 9 is acknowledged.

2. Claims 58-76 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Specie 2, their being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 9.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 31-36 and 54-57 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolff et al. (U.S. Patent 4,830,003).

Wolff et al. disclose a balloon expandable and self-expanding medical stent containing a cobalt alloy as is claimed (figures 1-8 and column 4 lines 4-17 and 30-54).

5. Claims 31-37, 49-51 and 53-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Lazarus et al. (U.S. Patent 5,275,622).

Lazarus et al. disclose a balloon expandable and self-expanding medical stent containing a first layer (131) forming from a cobalt alloy and a second layer (121) as is claimed (figures 1-8 and column 4 lines 4-17 and 30-54).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus et al. in view of Lee (U.S. Patent 5,123,917).

Lazarus et al. is explained as before. Lazarus et al. fails to disclose the second layer is disposed inwardly of the first layer.

Lee teaches an implant with first layer (30) with inner layer (10) (figure 4 and column 4 lines 49-64). The advantage of having the inner layer (10) disposed inwardly of the first layer (10) is the inner layer prevents thrombus by reducing the turbulence of the blood or body fluid flow.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Lee. to modify the apparatus Lazarus et al. to have the second layer disposed inwardly of the first layer. The motivation for incorporating the feature of Lee into the apparatus of Lazarus et al. is the inner layer prevents thrombus by reducing the turbulence of the blood or body fluid flow.

***Allowable Subject Matter***

8. Claims 38-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims..

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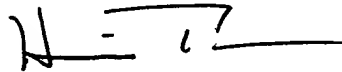
*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is 703-308-8969. The examiner can normally be reached on Monday-Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Hieu Phan  
Examiner  
Art Unit 3738



June 7, 2003



**CORRINE McDERMOTT**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**